

Commission should resolve these issues on an expeditious basis by determining in this proceeding that dark fiber is a common carrier offering and by determining that dark fiber is an unbundled network element under Section 251 that ILECs are required to provide to requesting telecommunications carriers.³⁰

VI. The Commission Should Not Grant Additional Relief to ILECs

RCN does not support the Commission's suggestion that it should grant Section 251(c) relief to ILECs that offer advanced services on an integrated basis.³¹ First, the Commission does not have the authority under Section 10 of the 1996 Act to forbear from application of Section 251(c). Moreover, such an exception from Section 251(c) would directly conflict with the Commission's determinations in its Order that ILEC provision of advanced services, except through its affiliate proposal, would be fully subject to Section 251.³²

Second, any such grant of relief would inhibit competition. Advanced services are most likely to reach all Americans if the ILECs are subject to unbundling obligations to permit additional competitors to provide service. Absent the essential unbundling obligations, ILECs would not have the incentive through competition to invest in the provision of advanced services.

³⁰ The Commission should also require that dark fiber be provided on a tariffed basis. This would enable persons who are not "requesting telecommunications carriers" under Section 251, and carriers for whom it may be burdensome to effectively participate in interconnection negotiations, to obtain dark fiber by ordering it out of a tariff.

³¹ *Section 706 NPRM*, ¶ 180.

³² *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order, CC Docket No. 98-147, FCC 98-188, released August 7, 1998.

VII. ILECs Must Offer Advanced Services for Resale

RCN agrees with the Commission's tentative conclusion that ILECs must establish a wholesale rate and offer for resale, any advanced services it generally offers to subscribers who are not telecommunications carriers. Section 251(c)(4) imposes the duty to ILECs to offer for resale at wholesale rates, "any telecommunications services that the carrier provides at retail to subscribers who are not telecommunications carriers."³³ RCN agrees with the Commission's conclusion that advanced telecommunications services fall within the core category of retail services that both Congress and the Commission anticipated would be available for resale with such discounts.³⁴ Accordingly, the Commission should require that advanced telecommunications services marketed by ILECs generally to residential users, business users, or ISPs should be deemed subject to the resale obligations of Section 251(c)(4).

VIII. The Commission Should Refrain from Granting InterLATA Relief

RCN strongly objects to any modification of LATA boundaries that would permit BOCs interLATA entry prior to compliance with § 271 of the 1996 Act. As noted by RCN above, the local markets are far from fully competitive. Through the barriers they have placed in preventing CLECs access to collocation and unbundled network elements, BOCs are largely responsible for the lack of choice consumers have today in their local telephone providers. The Commission must not reward this behavior by permitting modifications in LATA boundaries as a means to permit BOC

³³ 47 U.S.C. § 251(c)(4).

³⁴ *Section 706 NPRM*, ¶ 189

interLATA entry. Such modifications would be in plain violation of Section 271 of the Act and would diminish BOC incentives to open up the local exchange to competition.

IX. CONCLUSION

RCN commends the Commission in its attempt to ensure that advanced telecommunications services are available to all Americans. As a company that is targeting the residential market, RCN shares the Commission's desire. However, the most effective method of promoting the widespread availability of advanced telecommunications services is to require the ILECs to provide competitors with the access to facilities and loops necessary to compete in these markets. The Commission should thus be wary of providing the ILECs with opportunities to evade their responsibilities and should carefully craft any proposal permitting ILECs to provide advanced services through a separate affiliate that is not subject to Section 251(c). The Commission must ensure that any separate affiliate proposal would not permit the ILECs to favor this affiliate and inhibit competition.

Moreover, the Commission should use this opportunity to require the ILECs to further open their markets to competition. As RCN expressed above, the Commission should adopt additional collocation and loop unbundling requirements that would permit CLECs further access to the elements essential to the provision of local exchange and advanced telecommunications services.

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CERTIFICATE OF SERVICE

I, Ceil Petrowsky, hereby certify that on this 25th day of September 1998, copies of the foregoing Comments of RCN Telecom Services, Inc. was hand delivered to the parties listed below.

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